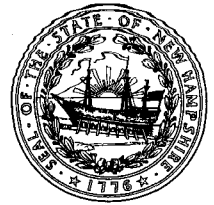




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Marc E. Gagnon and
Silver Mountain Mining Co., LLC
Route 10
93 Jolly Roger Road
Lempster, NH 03605

Re: Wetlands Bureau File # 2006-0262

ADMINISTRATIVE ORDER
No. WD 06-019

April 21, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Marc E. Gagnon and Silver Mountain Mining Co., LLC, pursuant to RSA 482-A:6 and RSA 485-A:22. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 29 Hazen Drive, Concord, New Hampshire.
2. Marc E. Gagnon, (a.k.a. Marco Gagnon) is an individual with a mailing address of Route 10, 93 Jolly Roger Road, Lempster, NH 03605.
3. Silver Mountain Mining Co., LLC, is a New Hampshire limited liability company having a mailing address of Route 10, 93 Jolly Roger Road, Lempster, NH 03605. The State of New Hampshire Secretary of State Corporate Division lists Marc E. Gagnon as the Registered Agent and Marco Gagnon as the President and Manager of Silver Mountain Mining Co., LLC.

C. STATEMENT OF FACTS AND LAW

1. Pursuant to RSA 482-A the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 et seq. to implement this program.
2. RSA 482-A:3, I, states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."

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DES Web site: www.des.nh.gov

3. RSA 482-A:14, III, provides that “[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A.”
4. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a Site Specific permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.
5. Env-Ws 415.02(y) defines significantly altering the characteristics of the terrain to include disturbing more than 100,000 square feet of contiguous area.
6. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.
7. Env-Ws 415.09(i) and (k) require employment of temporary and permanent methods for preventing soil erosion and controlling runoff.
8. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils.
9. Silver Mountain Mining Co., LLC, is the owner of property located at 93 Jolly Roger Road, Route 10, Lempster, more particularly referenced on Lempster Tax Map 13 as Lot 563.248 (the “Property”). The State of New Hampshire Secretary of State Corporate Division lists Marc E. Gagnon as the Registered Agent and Marco Gagnon as the President and Manager of Silver Mountain Mining Co., LLC.
10. A review of the Sullivan County Registry of Deeds records (Book 1366, Page 921) indicates that on May 1, 2003, the Property was created from a subdivision of a larger tract of land, hereinafter referenced as the “Original Property.”
11. The Original Property was apparently owned by Marc E. Gagnon and Roger Gagnon. It appears to have been transferred to International Wildlife, LLC, and the Property was subsequently transferred to Silver Mountain Mining Co., LLC, at the time the land was subdivided. The New Hampshire Secretary of State’s Office Corporate Division records list Marco Gagnon as the President, Manager and Registered Agent of International Wildlife, LLC.
12. On November 29, 2005, DES personnel conducted an inspection of the Property. During the inspection the following was observed:
 - a) Approximately 4,000 square feet of forested wetland had been filled for the construction of an access road;
 - b) Approximately 150 linear feet of stream channel had been culverted and redirected out of the original channel on the Property. The hydrology had been changed by

redirecting the stream through a culvert which outlets into a wetland and drains to a roadside ditch. The original stream channel is a tributary to Dodge Brook. Approximately 500 square feet of wetland had been filled to install the culvert. At the same location, an additional culvert had also been installed, directing stormwater from the road into the wetland;

c) Approximately 200 linear feet of stream channel had been filled in to create a parking area. This is the area of the original stream channel before it was redirected;

d) Approximately 2,000 square feet of forested wetland had been filled for the construction of the parking area;

e) Alteration of terrain in excess of 100,000 square feet had occurred. Construction of parking areas and roads were similar to those depicted on plans submitted for a Site Specific permit application (File # 980302-01).

13. Review of DES records indicates that the Original Property has previously been the subject multiple actions by the DES Site Specific program as follows:

a) On June 4, 1996, the DES Wastewater Engineering Bureau issued a Letter of Deficiency, WSPCD WEB 96-07, to Roger Gagnon for violations of RSA 485-A:17 for construction of a race track resulting in soil disturbance greater than 100,000 square feet without the required Site Specific permit on the Original Property. Roger Gagnon is the father of Marc E. Gagnon.

b) On November 25, 1996, DES issued Site Specific permit # WPS-4723 to Roger Gagnon and "Mark" E. Gagnon for 755,500 square feet of disturbance to construct Jolly Roger Moto-Sports consisting of a race track, access roads and parking areas on the Original Property.

c) On November 25, 1997, DES issued an Administrative Order WD 97-60 to "Mark" E. Gagnon for knowingly violating RSA 485-A:17, I and NH Admin. Rules Env-Ws 415.03 for disturbing an area over 100,000 square feet without first obtaining a permit and violating NH Admin. Rules Env-Ws 430.13 by causing an increase in the turbidity of a surface water of the State on the Original Property.

d) On February 28, 1998, DES received a Site Specific application (File # 980302-01) for 510,000 square feet of disturbance to construct an additional access road and parking lot for Jolly Roger Moto-Sports Park on the Original Property. Within the application, information was submitted relative to the site disturbance referenced in Administrative Order WD 97-60. This permit application was never approved.

e) On January 5, 2000, DES personnel conducted a site inspection and observed that many of the areas applied for in the 1998 Site Specific permit application (File # 980302-01) had been constructed without approval from DES.

- f) The unpermitted activities described in C.12 and C.13 (d) & (e) occurred following the issuance of Administrative Order WD 97-60.
14. Review of DES records indicates that the Original Property has previously been the subject multiple actions by the DES Wetlands Bureau as follows:
- a) On May 5, 1998, DES issued a Letter of Deficiency Wet 98-27 to "International Wildlife LLC, Attn: "Mark" Gagnon for violations of RSA 482-A:3, I, for two stream crossings and 1400 linear feet of fill in and adjacent to a stream on the Original Property (Wetlands File # 97-1767).
 - b) On May 14, 1998, DES issued a Notice of Proposed Administrative Fine AF 98-25 pursuant to RSA 482-A:3, I. This fine was paid by Jolly Roger Moto-Sports, Inc., on March 15, 1999. The authorized signature was M. E. Gagnon.
 - c) On September 30, 1998, DES received an after-the-fact Standard Dredge and Fill application from International Wildlife, LLC to retain 2 stream crossings and construct an additional 2 stream crossings to expand the motocross track. On November 5, 1998 DES granted after-the-fact approval (Wetlands File # 97-1767) for 4 stream crossings to expand the motocross track on the Original Property.
15. Review of aerial photographs taken in 2003 and 2004 indicates that an access road and parking areas resembling those requested in the Site Specific application (File # 980302-01) had been constructed. This permit application was never approved.
16. DES records indicate that no valid permits exist for any activities regulated under RSA 482-A or RSA 485-A:17 for the impacts observed during the November 29, 2005 DES site inspection of the Property.

D. DETERMINATION OF VIOLATIONS

1. Marc E. Gagnon and Silver Mountain Mining Co., LLC, have violated RSA 482-A:3, I, by filling a minimum of 200 linear feet of a stream to construct a parking area without obtaining a permit from DES.
2. Marc E. Gagnon and Silver Mountain Mining Co., LLC, have violated RSA 482-A:3, I, by installing a culvert and impacting a minimum of 500 square feet of wetland without obtaining a permit from DES.
3. Marc E. Gagnon and Silver Mountain Mining Co., LLC, have violated RSA 482-A:3, I, by filling a minimum of 4,000 square feet of wetland to construct a road without obtaining a permit from DES.
4. Marc E. Gagnon and Silver Mountain Mining Co., LLC, have violated RSA 482-A:3, I, by filling a minimum of 2,000 square feet of wetland to construct a parking area without obtaining a permit from DES.

5. Marc E. Gagnon and Silver Mountain Mining Co., LLC, have violated RSA 485-A:17, by failing to obtain a permit from DES prior to initiating alteration of terrain activities in excess of 100,000 square feet on the Property.

E. ORDER

Based on the above findings, DES hereby orders Marc E. Gagnon and Silver Mountain Mining Co., LLC, as follows:

1. **Immediately cease and desist** all activities on the Property, except as necessary to stabilize the Property pursuant to this Order.

2. **Within 60 days of the date of this Order**, submit to DES for approval a restoration plan for wetlands located on the Property. The restoration plan shall be prepared by a certified wetland scientist and stamped by a licensed surveyor, and include the following:

- a) Existing conditions and land topography, with dimensions drawn to scale, including the delineated footprint of all wetlands, streams, ponds, and jurisdictional runoffs on the Property. Prepare delineation in accordance with Section F of the *Army Corps of Engineers Wetlands Delineation Manual* ("Section F");
- b) The delineated footprint of all disturbed areas in accordance with Section F;
- c) The area, in square feet, of disturbance on the Property;
- d) A plan for reestablishing the wetlands and stream to its original footprint along with proposed conditions after reestablishing the jurisdictional areas;
- e) A detailed stream channel restoration plan;
- f) A detailed proposed means of sediment and erosion control (silt fences, haybales, matings, *etc.*);
- g) A proposed schedule, restoration, and construction sequence listing equipment and methods for accomplishing restoration. All restoration activities on the Property shall be completed by **June 1, 2007**;
- h) A detailed proposed planting plan for the reestablishment, stabilization, and revegetation of the restoration areas; and
- i) A monitoring and reporting schedule including an initial report to DES and once the restoration plan is completed at least one restoration progress assessment report every year for the first two full growing seasons documenting at least 75% survival of all vegetation planted during the restoration project. These reports shall be submitted to DES on **July 1, 2007, September 30, 2008 and September 30, 2009** respectively.

3. Retain a certified wetland scientist to supervise the implementation of the restoration and to submit the restoration progress reports prepared in accordance with Item E.2 above.

4. Implement the restoration plan proposed in accordance with Item E.2, above, only after receiving written approval, and as conditioned, by DES.

5. **Within 60 days of the date of this Order**, submit to DES an application for a Site Specific permit for the Property. The application shall be prepared by an engineer licensed in the State of New Hampshire, in accordance with Env-Ws 415.05.

6. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Dawn Buker, Wetlands Compliance Specialist
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-4066
e-mail: dbuker@des.state.nh.us

F. APPEAL

Any person aggrieved by determinations D.1 through D.4 of this Order may request DES to reconsider this determination within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

Any person aggrieved by determination D.5 of this Order may appeal to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

Filing an appeal or request for reconsideration of the Order will not automatically relieve Marc E. Gagnon or Silver Mountain Mining Co., LLC, of their obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Marc E. Gagnon and Silver Mountain Mining Co., LLC, remain obligated to comply with all applicable requirements. DES will continue to monitor Marc E. Gagnon and Silver Mountain Mining Co., LLC, for compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Sullivan County Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E., Director
Water Division


Michael P. Nolin, Commissioner
Department of Environmental Services

CERTIFIED MAIL # 7005 0390 0001 8452 0237

ec: James P. Martin, Public Information Officer, DES
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Dawn Buker, DES Wetlands Bureau
Tracey Boisvert, DES Wetlands Bureau.
cc: Gretchen R. Hamel, Legal Unit Administrator
Town of Lempster Board of Selectmen
Town of Lempster Conservation Commission